

WEINER BRODSKY SIDMAN KIDER PC

1300 NINETEENTH STREET NW  
FIFTH FLOOR  
WASHINGTON DC 20036 1609  
TEL 202 628 2000  
FAX 202 628 2011

ENTERED  
Office of Proceedings  
FEB 28 2005  
Part of  
Public Record

February 28, 2005



**BY HAND**

Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, NW  
Washington, DC 20423

Re: Docket No. AB-512X, Sierra Pacific Industries -- Abandonment Exemption -- In Amador County, CA 213432

Docket No. AB-880X, SierraPine -- Discontinuance Exemption -- In Amador County, CA > 213434

Dear Secretary Williams:

Pursuant to 49 C.F.R. §1152.27(c)(1)(i)(C), Martell Industrial Center, LLC ("Martell") hereby petitions the Surface Transportation Board to toll the period of time in which Martell may submit an offer of financial assistance ("OFA") in the above-referenced proceedings ("Petition"). The current deadline for submitting an OFA is March 7, 2005.

Martell is considering the submission of an OFA for continued rail service over the Amador Foothills Railroad. It is the owner of approximately 13 acres of land adjacent to this rail line. Located on this property is a 190,000-square foot manufacturing, distribution and warehousing facility, which historically has used rail service. In addition to the facility, Martell's property includes 5 as-yet undeveloped acres, zoned for industrial use, for which Martell is actively pursuing industrial development options. Martell is considering an OFA because the availability of rail service will benefit its current facility and enhance its ability to attract new business to locate on its remaining property.

Section 1152.27(a) provides that a party considering the submission of an OFA (such as Martell) has the right to receive certain information, such as a net liquidation value estimate and track condition reports. The railroads seeking abandonment and discontinuance authority (such

as Sierra Pacific Industries ("SPI") and SierraPine) must "promptly" furnish the requesting party with such information.

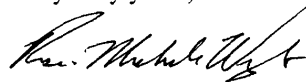
On December 13, 2004, more than 84 days before the OFA deadline in this proceeding, Martell requested certain information from SPI and/or SierraPine pursuant to 49 C.F.R. § 1152.27(a) (copy attached). Subsequently, Martell reiterated its request for the information in letters dated December 22, 2004 and January 27, 2005 (copies attached).

In a letter dated January 26, 2005 (but received by Martell after Martell had sent its January 27, 2005, letter), SPI and SierraPine advised Martell that the railroads "are having an appraisal of the value of the railroad property performed and are assembling or looking for the other items of information [Martell] requested to the extent they exist." The letter further stated that Martell would be provided "with the information as soon as possible, but it appears unlikely that the appraisal will be complete sooner than a month from now." (Copy attached.)

Since its December 13, 2004, request, Martell has not received *any* of the requested information, even though some of it was based on statements the railroads made in their petition for abandonment/discontinuance, and thus should have been readily accessible. In addition, SPI and SierraPine have never objected to the scope of the information requested by Martell.<sup>1</sup>

Accordingly, Martell respectfully requests that the deadline for Martell to submit an OFA be extended until 60 days after the date on which SPI and/or SierraPine provide Martell with the information it requested in its December 13, 2004, letter. Enclosed for filing in the above-referenced proceedings are an original and 10 copies of this Petition. Please acknowledge receipt of the Petition by date-stamping the enclosed acknowledgment copy and returning it to our messenger.

Very truly yours,



Rose-Michele Weinryb

Enclosures

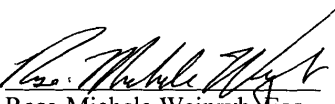
---

<sup>1</sup> In a letter, dated December 17, 2004, the railroads did note that certain information requested by Martell was required to be furnished only if Martell was considering an offer of subsidy. (Copy attached.) However, as Martell stated in its December 22, 2004, response, "Martell cannot know whether an offer to purchase or an offer of subsidy is the more attractive option until after it has the opportunity to review the information it has requested pursuant to section 1152.27(a)."

**CERTIFICATE OF SERVICE**

I certify that on February 28, 2005, a copy of the foregoing Petition was served by hand upon the following:

Richard A. Allen, Esq.  
Zuckert Scoutt & Rasenberger, L.L.P.  
888 Seventeenth Street, NW  
Washington, DC 20006-3309

  
Rose-Michele Weinryb, Esq.

WEINER BRODSKY SIDMAN KIDER PC

1300 NINETEENTH STREET NW  
FIFTH FLOOR  
WASHINGTON DC 20036 1609  
TEL 202 628 2000  
FAX 202 628 2011

December 13, 2004

**BY FACSIMILE**

Richard A. Allen, Esq.  
Zuckert Scoutt & Rasenberger, L.L.P.  
888 Seventeenth Street, NW  
Washington, DC 20006-3309

Re: Docket No. AB-512X, Sierra Pacific Industries -- Abandonment Exemption -- In Amador County, CA; Docket No. AB-880X, SierraPine -- Discontinuance Exemption -- In Amador County, CA

Dear Mr. Allen:

We are writing this letter on behalf of Martell Industrial Center LLC. On November 15, 2004, Sierra Pacific Industries and SierraPine filed a petition for exemption to abandon the Amador Foothills Railroad (m.p. 00 at Lone, CA to m.p. 12.0 at Martell, CA). Pursuant to 49 C.F.R. § 1152.27(a), we hereby request the following information:

1. The Railroad(s)' estimate of the net liquidation value of the subject line -- real property (with supporting documentation). In addition to the real property value component in the net liquidation value estimate, please include the following information in the supporting work papers: (i) identify all parcels of the real property comprising the subject line for which the railroad(s) are claiming fee title (and the basis for any such claims); (ii) any basis for claiming an assembled corridor valuation; (iii) copies of comparable sales data used in any "across-the fence" valuation (along with any appropriate adjustments, such as for size, shape topography, adjacent land use, etc.); (iv) any contracts or firm bids in the last five years regarding the purchase of the subject real property; and (v) any easements, licenses or restrictions that affect the use of the subject real property.

2. The Railroad(s)' estimate of the net liquidation value of the subject line – rail and other track materials (with supporting documentation). In addition to the net salvage value component (e.g., rail and other track materials) in the net liquidation value estimate, please include the following information in the supporting work papers: (a) the unit value (e.g., \$ \_\_/net ton) of each type of track material included in the net salvage value estimate, based on recent bids of track material suppliers or other supporting documentation; (b) the total number or amount (as applicable) of each type of track material included in the net salvage value estimate, distinguishing between reusable and scrap materials; (c) the age of the rail ties on the subject line, distinguishing between relay, landscape or scrap ties; and (d) the cost to remove, transport and dispose of the subject line's rail and other track materials, based on recent bids of track material suppliers or other supporting documentation.

3. The Railroad(s)' estimate of the annual subsidy to sustain rail operations (with supporting documentation) and the Railroad(s)' estimate of the costs to rehabilitate the line to FRA class 1 condition (with supporting documentation). In addition to the estimate of the annual subsidy to sustain rail operations and the estimate of the costs to rehabilitate the line to FRA class 1 condition, please include the following information in the supporting work papers: (u) documentation to support the annual assessment of operating, maintenance and capital costs for the years 1999 through June 30, 2004 (including number of units of material and cost per unit), as set forth in Exhibit B of the petition for exemption to abandon the subject line; (v) documentation to support the annual assessment of operating, maintenance and capital costs for the years 2004 through 2010 (including number of units of material and cost per unit), as set forth in Exhibit B of the petition for exemption to abandon the subject line; (w) the costs directly associated with the CPUC/FRA remediation plan, with supporting documentation (including number of units of material and cost per unit); (x) documentation supporting the estimate of the costs to rehabilitate the line to FRA class 1 condition (including number of units of material and cost per unit); (y) railroads' track inspection and bridge inspection reports of the subject rail line for the past three years; and (z) documentation to support the annual assessment of railroad revenue for the years 1999 through 2010 (including the revenue the railroad received from each shipper), as set forth in Exhibit B of the petition for exemption to abandon the subject line.

4. Notice of transportation requests, complaints, lawsuits, etc. relating to or affecting the subject line. Please identify (and to the extent applicable, provide copies of) the following information: (A)(i) all inquiries regarding rail transportation services over the subject line in the last three years, including without limitation all shippers or potential shippers for which one or both of the railroads have quoted prices for traffic (regardless of whether the traffic moved), and (ii) all tariffs issued in the last three years by the railroad(s) relating to or affecting rail transportation over the subject line (B) all studies of railroad and crossing traffic conducted in the last three years that relate to or affect the subject rail line, (C) all notices filed against the railroad(s) in the last three years by any governmental agency that relate to or affect ownership, operations or use by the railroad(s) of the subject track and real property, (D) all complaints by neighbors in the last three years that relate to or affect ownership, operations or use by the railroad(s) of the subject track and property, (E) all environmental reports or reports of

WEINER BRODSKY SIDMAN KIDER PC

Richard A. Allen, Esq.

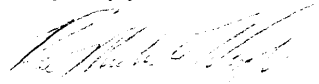
- 3 -

December 13, 2004

contamination regarding the subject track and real property that have been generated in the last five years, including without limitation Phase 1 and Phase 2 reports provided to lending institutions and other governmental entities, (F) all known or potential environmental contamination regarding the subject track and real property, as well as adjacent property, (G) all lawsuits filed in the last three years by third parties (including employees) that relate to or affect ownership, operations, or use by the railroad(s) of the subject track and real property, (H) all notices provided to the railroad(s) in the last three years regarding a railroad(s)' breach or nonperformance under an agreement that relates to or affects ownership, operation, or use of the subject track and real property.

Please let us know if you have any questions.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Rose-Michele Weinryb", written in dark ink.

Rose-Michele Weinryb

WEINER BRODSKY SIDMAN KIDER PC

1300 NINETEENTH STREET NW  
FIFTH FLOOR  
WASHINGTON DC 20036 1609  
TEL 202 628 2000  
FAX 202 628 2011

December 22, 2004



**BY FACSIMILE**

Richard A. Allen, Esq.  
Zuckert Scoutt & Rasenberger, L.L.P.  
888 Seventeenth Street, NW  
Washington, DC 20006-3309

Re: Docket No. AB-512X, Sierra Pacific Industries – Abandonment Exemption – In Amador County, CA

Docket No. AB-880X, SierraPine – Discontinuance Exemption – In Amador County, CA

Dear Mr. Allen:

This letter is in response to your letter of December 17, 2004 (copy attached). Martell Industrial Center LLC ("Martell") is considering an offer of financial assistance for continued rail service over the Amador Foothills Railroad; accordingly, on behalf of Martell, we requested certain information pursuant to 49 C.F.R. § 1152.27(a) in our December 13, 2004, letter. Martell cannot know whether an offer to purchase or an offer of subsidy is the more attractive option until after it has the opportunity to review the information it has requested pursuant to section 1152.27(a).

The petitioning railroads did not provide in their petition the types of information necessary to evaluate an offer of financial assistance (e.g., the railroads' estimate of the net liquidation value of the line, its estimate of the annual subsidy for continued operation of the line, etc.) To the extent that their petition did provide information relevant to an offer of financial assistance, the petitioning railroads did not provide supporting documentation. Therefore, in order for Martell to evaluate an offer of financial assistance, the petitioning railroads must first provide Martell with the requested information.

Martell owns 13 acres of real property adjacent to the Amador Foothills Railroad, which includes a 190,000 square foot manufacturing, distribution and warehousing facility. This facility was previously operated by Fibreform (predecessor to Martell) and then was leased to

WEINER BRODSKY SIDMAN KIDER PC

Richard A. Allen, Esq.

- 2 -

December 22, 2004


Landmark Trim USA. Both of these operators used rail service over the Amador Foothills Railroad. Although Landmark Trim USA stopped its operations approximately 3 months ago, the facility is now being operated by two entities -- MidValley Trust (the parent company of Landmark Trim USA), which began operations at the facility approximately 6 months ago, and Global Molding, which began operations earlier this month. In addition, Martell is actively pursuing industrial development options for the remaining 5 unused acres of its property. Availability of rail service is an important factor in both keeping and attracting new businesses. Accordingly, Martell is considering an offer of financial assistance so that its property will continue to have access to rail service.

Martell is not alone in recognizing the importance of continued rail service to existing and future industries located along the Amador Foothills Railroad. In a recent filing with the Surface Transportation Board, the County noted that "[t]he rail line extends from a large and developing commercial and industrial area in the heart of the County on the east 12 miles to Lone on the west..." and that "[r]ail transit is important to some existing and some prospective businesses in Martell and to the overall development of Amador County."

Although you question Martell's bona fides to consider an offer of financial assistance, the case you cite in support of your position is inapposite. In *Roaring Fork Railroad Holding Authority* (STB Docket No. AB-547X, served May 21, 1999), the STB was evaluating an actual offer, not a request for information. In addition, the offeror in that case had admitted that its purpose for acquiring the line was not for continued freight service and that freight service would not be sustainable. None of these factors are present here.

Martell merely seeks the information to which it is entitled, so that it may determine the feasibility of an offer of financial assistance. The obligation to provide information at this juncture is on the petitioning railroads, not on Martell. Please advise us promptly whether you plan to comply with our request for information pursuant to section 1152.27(a).

Very truly yours,



Rose-Michele Weinryb

cc: Hon. Vernon A. Williams, Surface Transportation Board (by hand)

ZUCKERT SCOUTT & RASENBERGER, L.L.P.

ATTORNEYS AT LAW

888 Seventeenth Street, NW, Washington, DC 20006-3509  
Telephone (202) 298-8660 Fax (202) 342-0683  
www.zsrlaw.com

RICHARD A. ALLEN

DIRECT DIAL (202) 973-7902  
raallen@zsrlaw.com

December 17, 2004

BY FACSIMILE AND MAIL

Rose-Michele Weinryb, Esquire  
Weiner Brodsky Sidman Kider PC  
1300 Nineteenth Street, NW  
Fifth Floor  
Washington, DC 20036-1609

Re: Amador Foothills Railroad

Dear Ms. Weinryb:

I am writing in response to your letter of December 13, 2004 requesting on behalf of Martell Industrial Center LLC ("Martell") certain information from Sierra Pacific Industries ("SPI") and SierraPine pursuant to 49 C.F.R. §1152.27(a), which pertains to procedures for offers of financial assistance ("OFA") to continue existing rail service.

That regulation pertains to requests for information by parties "considering an offer of financial assistance to continue existing rail service." Your letter, however, nowhere indicates that Martell is, in fact, considering such an offer. Moreover, certain of the information you have requested, including that in your numbered paragraph 3, is to be provided only "if an offer of subsidy is contemplated." 49 C.F.R. §1152.27(a)(3). Therefore, please confirm to us in writing that Martell is "considering an offer of financial assistance" (if indeed that is the case), and what kind of OFA is being contemplated. If Martell is, in fact, contemplating filing an OFA, SPI and SierraPine will, of course, comply with their information production obligation to the fullest extent required by law and regulation.

Further, as I'm sure you know, under the statute, regulations and STB precedent, OFAs can be made only by "financially responsible persons" that have a bona fide intention of preserving rail service. See, for example, *Roaring Fork Railroad Holding Authority—Abandonment Exemption—In Garfield, Eagle and Pitkin Counties, CO*, STB Docket No. AB-547X, slip op. at 4 (served May 21, 1999), in which the Board rejected an OFA because "the statutory objective of continued freight service would not be likely to result from this OFA proposal." Moreover, "a successful offeror must operate the acquired line for 2 years after an acquisition is consummated and may not transfer the line, except to the carrier from whom it was

ZUCKERT SCOUTT &amp; ROSENBER, L.L.P.

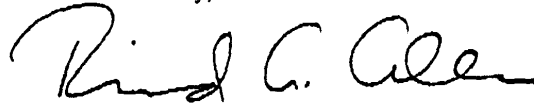
Rose-Michele Weinryb, Esquire  
December 17, 2004  
Page 2

purchased, for 5 years." *Chelsea Property Owners—Abandonment—Portion of the Consolidated rail Corporation's West 30<sup>th</sup> Street Secondary Track In New York, NY; In The Matter Of An Offer Of Financial Assistance*, Docket No. AB-167 (Sub-No. 1094), 1992 ICC Lexis 280, \*6 n.6 (ICC November 30, 1992); see 49 U.S.C. §10904(f)(4)(A). Given the almost complete lack of demand for rail service over the line, including SierraPine's stated intent not to use rail service for its transportation needs at Martell, and the very substantial operating costs documented in the petition for exemption, it is difficult to see how any person or entity could be entertaining a bona fide intention of making an OFA to continue freight rail service on this line.

It is therefore appropriate for us to request that Martell provide Sierra Pacific and SierraPine any information in Martell's possession concerning: (1) the shippers Martell believes will request rail service over the line, (2) the volume of traffic Martell believes each shipper will tender for rail service in each of the years 2005-07, (3) the specific bases for such beliefs and estimates, including written or oral commitments by such shippers to locate in Martell and tender traffic for rail shipment, (4) the source of financing Martell intends to use to acquire the line, restore it to FRA Class I track standards and operate it during the two years following acquisition (or to subsidize Sierra Pine's restoration and operation of the line), including the specific bases for believing that such financing will be available.

Please let me know by close of business on December 22, 2004 whether Martell has any of the above-described information, and, if so, when it will provide it to Sierra Pacific and Sierra Pine.

Sincerely,



Richard A. Allen

cc: David H. Dun, Esq.

WEINER BRODSKY SIDMAN KIDER PC

1300 NINETEENTH STREET NW  
FIFTH FLOOR  
WASHINGTON DC 20036 1609  
TEL 202 628 2000  
FAX 202 628 2011



January 27, 2005

**BY FACSIMILE**

Richard A. Allen, Esq.  
Zuckert Scoutt & Rasenberger, L.L.P.  
888 Seventeenth Street, NW  
Washington, DC 20006-3309

Re: Docket No. AB-512X, Sierra Pacific Industries -- Abandonment Exemption -- In Amador County, CA

Docket No. AB-880X, SierraPine -- Discontinuance Exemption -- In Amador County, CA

Dear Mr. Allen:

On December 13, 2004, we requested, on behalf of Martell Industrial Center LLC ("Martell"), that Sierra Pacific Industries and SierraPine provide Martell with certain information pursuant to 49 C.F.R. § 1152.27. On December 22, 2004, we reiterated that request, and asked that you "advise us promptly whether you plan to comply with our request for information pursuant to section 1152.27(a)."

More than a month has passed since that second letter, and we have received no response from you.

Martell is considering an offer of financial assistance for continued rail service over the Amador Foothills Railroad. Martell has formally requested, and continues to request, the information to which it is entitled pursuant to 49 C.F.R. § 1152.27(a). As you are aware, section 1152.27(a) provides that SPI and SierraPine (as applicable) must provide the required information "*promptly upon request* to a party considering an offer of financial assistance to continue existing rail service..." (Emphasis added.)

WEINER BRODSKY SIDMAN KIDER PC

Richard A. Allen, Esq.

- 2 -

January 27, 2005

Please advise us as to when we can expect to receive the information requested in our December 13, 2005, letter.<sup>1</sup>

Very truly yours,



Rose-Michele Weinryb

cc: Hon. Vernon A. Williams, Surface Transportation Board (by hand)  
Mr. Charles Field, Amador County Transportation Commission (by first-class mail)

---

<sup>1</sup> In addition, we note that in the Verified Statement of Laine Atkinson (Exhibit B) to the railroad's abandonment petition, Mr. Atkinson refers to the five-year remediation plan submitted to the California Public Utilities Commission ("CPUC") on February 26, 2004, as Exhibit 2. We were unable to locate this exhibit in our copy of the abandonment petition. Although in our December 13, 2005, letter, we have already requested a copy of "the costs directly association with the CPUC/FRA remediation plan, with supporting documentation....," we clarify that this request includes a request for a copy of the underlying remediation plan submitted by SierraPine.

ZUCKERT SCOUTT & RASENBERGER, L.L.P.

ATTORNEYS AT LAW

888 Seventeenth Street, NW, Washington, DC 20006-3309  
Telephone [202] 298-8660 Fax [202] 342-0683  
www.zsrlaw.com

RICHARD A. ALLEN

DIRECT DIAL (202) 973-7902  
raallen@zsrlaw.com

January 26, 2005

Rose-Michele Weinryb, Esquire  
Weiner Brodsky Sidman Kider PC  
1300 Nineteenth Street, NW  
Fifth Floor  
Washington, DC 20036-1609

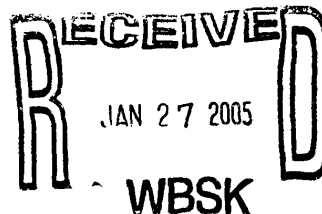
Re: Amador Foothills Railroad

Dear Ms. Weinryb:

In response to your letters dated December 13 and December 22, 2004, I am writing to advise that SierraPine and Sierra Pacific Industries are having an appraisal of the value of the railroad property performed and are assembling or looking for the other items of information you requested to the extent they exist. We will provide you with the information as soon as possible, but it appears unlikely that the appraisal will be complete sooner than a month from now.

Sincerely,

  
Richard A. Allen



ZUCKERT SCOUTT & RASENBERGER, L.L.P.

ATTORNEYS AT LAW

888 Seventeenth Street, NW, Washington, DC 20006-3309

Telephone [202] 298-8660 Fax [202] 342-0683

www.zsrlaw.com

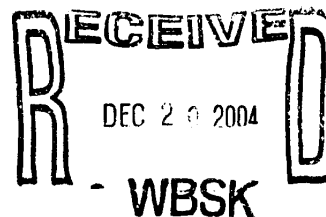
RICHARD A. ALLEN

DIRECT DIAL (202) 973-7902  
raallen@zsrlaw.com

December 17, 2004

**BY FACSIMILE AND MAIL**

Rose-Michele Weinryb, Esquire  
Weiner Brodsky Sidman Kider PC  
1300 Nineteenth Street, NW  
Fifth Floor  
Washington, DC 20036-1609



Re: **Amador Foothills Railroad**

Dear Ms. Weinryb:

I am writing in response to your letter of December 13, 2004 requesting on behalf of Martell Industrial Center LLC ("Martell") certain information from Sierra Pacific Industries ("SPI") and SierraPine pursuant to 49 C.F.R. §1152.27(a), which pertains to procedures for offers of financial assistance ("OFA") to continue existing rail service.

That regulation pertains to requests for information by parties "considering an offer of financial assistance to continue existing rail service." Your letter, however, nowhere indicates that Martell is, in fact, considering such an offer. Moreover, certain of the information you have requested, including that in your numbered paragraph 3, is to be provided only "if an offer of subsidy is contemplated." 49 C.F.R. §1152.27(a)(3). Therefore, please confirm to us in writing that Martell is "considering an offer of financial assistance" (if indeed that is the case), and what kind of OFA is being contemplated. If Martell is, in fact, contemplating filing an OFA, SPI and SierraPine will, of course, comply with their information production obligation to the fullest extent required by law and regulation.

Further, as I'm sure you know, under the statute, regulations and STB precedent, OFAs can be made only by "financially responsible persons" that have a bona fide intention of preserving rail service. See, for example, *Roaring Fork Railroad Holding Authority—Abandonment Exemption—In Garfield, Eagle and Pitkin Counties, CO*, STB Docket No. AB-547X, slip op. at 4 (served May 21, 1999), in which the Board rejected an OFA because "the statutory objective of continued freight service would not be likely to result from this OFA proposal." Moreover, "a successful offeror must operate the acquired line for 2 years after an acquisition is consummated and may not transfer the line, except to the carrier from whom it was

ZUCKERT SCOUTT & RASENBERGER, L.L.P.

Rose-Michele Weinryb, Esquire  
December 17, 2004  
Page 2

purchased, for 5 years.” *Chelsea Property Owners—Abandonment—Portion of the Consolidated rail Corporation’s West 30<sup>th</sup> Street Secondary Track In New York, NY; In The Matter Of An Offer Of Financial Assistance*, Docket No. AB-167 (Sub-No. 1094), 1992 ICC Lexis 280, \*6 n.6 (ICC November 30, 1992); see 49 U.S.C. §10904(f)(4)(A). Given the almost complete lack of demand for rail service over the line, including SierraPine’s stated intent not to use rail service for its transportation needs at Martell, and the very substantial operating costs documented in the petition for exemption, it is difficult to see how any person or entity could be entertaining a bona fide intention of making an OFA to continue freight rail service on this line.

It is therefore appropriate for us to request that Martell provide Sierra Pacific and SierraPine any information in Martell’s possession concerning: (1) the shippers Martell believes will request rail service over the line, (2) the volume of traffic Martell believes each shipper will tender for rail service in each of the years 2005-07, (3) the specific bases for such beliefs and estimates, including written or oral commitments by such shippers to locate in Martell and tender traffic for rail shipment, (4) the source of financing Martell intends to use to acquire the line, restore it to FRA Class I track standards and operate it during the two years following acquisition (or to subsidize Sierra Pine’s restoration and operation of the line), including the specific bases for believing that such financing will be available.

Please let me know by close of business on December 22, 2004 whether Martell has any of the above-described information, and, if so, when it will provide it to Sierra Pacific and Sierra Pine.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard A. Allen". The signature is fluid and cursive, with the first name "Richard" being more prominent and the last name "Allen" following in a similar style.

Richard A. Allen

cc: David H. Dun, Esq.